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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 21 2003
LIN 01 172 54288

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be dismissed.

The petition was filed on April 23, 2001. The petitioner sought to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in business. Under Part 2 of the Form I-140, the petitioner indicated that the petition was being filed for an alien of extraordinary ability.

On June 14, 2001, the director denied the petition, stating that the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability.

On July 12, 2001, the petitioner filed an appeal. A letter accompanying the appeal from Dr. R.K. Murukurthy, President, Rao Design International, Inc., specifically stated: "[The beneficiary] has extraordinary abilities in the field of International Business." We note that Dr. R.K. Murukurthy is the same individual who signed the petition under Part 8 of the Form I-140.

The Service regulation at 8 C.F.R. 204.5(c) provides:

> Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The Administrative Appeals Office ("AAO") dismissed the appeal on July 16, 2002, because the petitioner had not submitted evidence pertaining to the regulatory criteria at 8 C.F.R. 204.5(h)(3).

On August 15, 2002, counsel for the petitioner filed a motion to reopen and reconsider. On motion, counsel has requested that this petition be considered pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3). There is, however, no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act.

Counsel states: "It is respectfully submitted that the District Director erred in not requesting a G-28 be filed and that the Associate Commissioner should have requested a G-28 be filed pursuant to applicable regulations." We disagree, noting that the Service regulation at 8 C.F.R. 204.5(c) specifically states: "An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A)... of the Act..." Counsel does not specifically identify any "applicable regulations" which preclude the president of a U.S. employer from filing an immigrant petition under section 203(b)(1) or (2) of the Act. The argument that that the president

of the petitioning entity should be deemed not entitled to file a petition or an appeal is without basis in statute, regulation, or case law. Counsel's argument seems to imply that aliens or entities filing immigrant petitions are required to have legal representation, but the Service regulations at 8 C.F.R. 292.1 to which counsel has referred, set forth no such requirement. While legal representation is certainly an alien or entity's right, it is certainly not mandated in immigrant petition proceedings.

The determination of whether to reopen or reconsider an AAO decision is limited to the question of whether the AAO decision was correct at the time it was made. On motion, counsel offers no evidence or arguments pertaining to the beneficiary's eligibility for classification pursuant to 203(b)(1)(A) of the Act. In this case, we find no errors in the AAO's prior decision and therefore it will not be disturbed.

We note that the record does contain a photocopy of a labor certification issued by the Department of Labor. This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The motion is dismissed.